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ATTORNEY GENERAL

State of Louisiana
DEPARTMENT OF JUSTICE
P.O. BOX 94005
BATON ROUGE
70804-9005

AUG 14 2015

OPINION 15-0059

90-A-1 PUBLIC FUNDS & CONTRACTS
La. R.S. 39:704

Bruce G. Mohon
Assistant District Attorney
Parish of St. James
P.O. Box 66
Convent, LA 70723

The St. James Parish Police Jury may use the Road Lighting Millage Tax proceeds contained in the Parish Road Lighting Fund for the purpose of relocating utility poles that provide lighting and support for other light poles.

Dear Mr. Mohon:

On behalf of the St. James Parish Council (the "Parish"), you have requested an opinion from this office related to the Parish's use of funds for the purpose of relocating certain utility poles. Specifically, you have indicated that the Parish was awarded a grant from the Federal Highway Administration for the purpose of constructing a multi-use bicycle/pedestrian trail in St. James Parish along La. Hwy. 44 ("River Road"). As part of an agreement with the Louisiana Department of Transportation and Development ("DOTD"), the administrator of the grant, the Parish is responsible for paying all costs associated with the relocation of any utilities that interfere with the construction of the trail. According to your request, approximately twenty-one (21) utility poles will require relocation at a cost of approximately \$70,000. According to the information you provided, all but one of these utility poles either have lights attached to them or provide direct support for other poles that provide light. Once relocated, these utility poles will continue to provide light as well as support for light poles.

According to your request, the Parish intends to pay for the relocation of the utility poles with funds contained in the Parish Road Lighting Fund. The monies in this fund are obtained from a Road Lighting Millage Tax. You have asked this office whether the Parish may use the funds contained in the Parish Road Lighting Fund for the purpose of relocating the utility poles. Additionally, you have asked what other funds might be used in the event this office determines that the Parish Road Lighting Fund may not be used.

In order to determine whether monies in the Parish Road Lighting Fund may be used to relocate the utility poles, the Road Lighting Millage Tax, the source of the monies, must be analyzed to determine whether the tax proceeds derived from the tax may be used for such purposes. Louisiana law provides that the proceeds of any special tax shall

constitute a trust fund to be used exclusively for the objects and purposes for which the tax was levied. La. R.S. 39:704. Additionally, Louisiana jurisprudence provides that special tax authorizations must be strictly construed. *Police Jury of the Parish of Acadia v. All Taxpayers, et al.*, 95-145 (La.App. 3 Cir. 3/29/95); 653 So.2d 94, *rehearing denied*, 657 So.2d 1032 (La. 6/30/95); *Hemler v. Richland Parish School Board*, 76 So. 585 (La. 1917); *Watkins v. Ouachita Parish School Board*, 136 So. 591 (La. 1931); *Hodnett v. Monroe City School Board*, 277 So.2d 598 (La. App. 2 Cir. 1972) and *Brock v. St. James Parish Council*, 407 So.2d 1265 (La. App. 4 Cir. 1981), *writ denied* 412 So.2d 1094 (La. 1982). Moreover, it has consistently been the opinion of this office that sale and use tax proceeds must be used solely for the purposes approved by the voters. See, e.g. La. Atty. Gen. Op. Nos. 13-0159, 12-0089, 09-0150, 02-0060.

According to the information you provided our office, the Road Lighting Millage Tax proposition states that the tax is levied for "the purpose of providing, maintaining and operating electric lights on the streets, roads, highways, alleys and public places..." It would appear that the relocation of the utility poles would satisfy this purpose. In relocating the poles, the Parish is not only removing obstacles impeding the construction of the bicycle/pedestrian trail, but the relocation also serves the purpose of continuing to provide and maintain street lighting in public places of the Parish.

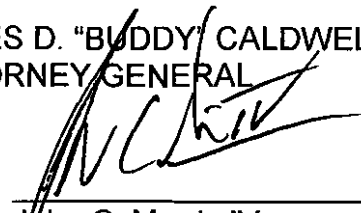
Accordingly, it is the opinion of this office that the Parish may use the Road Lighting Millage Tax proceeds contained in the Parish Road Lighting Fund for the purpose of relocating utility poles that provide lighting or support for other light poles. That purpose is authorized by the proposition approved by the voters of the Parish.

We trust this adequately responds to your request. However, if our office can be of further assistance, please do not hesitate to contact us.

Yours very truly,

JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

By:


John C. Morris IV
Assistant Attorney General

JDC/JCMIV